

# Human rights-based approach to WASH

## Frequently asked questions<sup>i</sup>

**Q: Water/sanitation is a **need**, water/sanitation is a **right**! Does it matter whether people get water or sanitation as a need or whether they get it as a right, so long as they get water or sanitation facilities? In other words, is there a meaningful difference between a human rights-based approach (H) and a needs-based approach (NBA) If so, what is this difference?**

**A:** A needs-based approach tries to change people's situation of lack of access to services by satisfying their need in the quickest way possible. An HRBA examines whether people are able to exercise their rights, and empowers them to do so. A needs-based approach therefore assists people to gain specific services without changing how people interact with the authorities. The benefits to the individual and communities will only be related to the particular service delivered. An HRBA is about changing how people interact with authorities. In the latter case, the change in the balance of power can lead to benefits beyond the services.

**How?** First, an HRBA tries to change people who are deprived so that they do not see themselves, and are not seen as, beneficiaries, but as claimants with agency. This is a particular kind of change of mind-set on the behalf of both the individuals and communities with the authorities. When people become rights-claimants they are empowered to claim their rights in other areas, leading to a changing of power equations on other issues too.

Second, an HRBA also tries to make the wider system of governance and government work as it should, with the individuals and communities able to hold authorities to account. When necessary, an HRBA aims to modify the system of governance and government, through implementing, for example, a regulatory framework and complaints system, so that individuals and communities can continue to exercise their rights.

As a result it can be said that an HRBA (in contrast to an NBA) tries to change people's situation of deprivation in a more sustainable manner for a wider section of the population.

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**Q: Does an HRBA necessarily involve changing policies and laws? And by changing policies and laws will the lack of access to services automatically be resolved? And does that mean that until such policies or laws are changed people must continue to suffer?**

**A:** First there must be clarity between the various ‘expressions’ of system of governance: conventions, declarations, policies, case law, parliamentary law, constitutional law, regulations, rules, budget etc. Changing the system of governance involves understanding these differences and knowing how to influence them.

Changing policies and laws helps significantly and in the long run is crucial – but the situation of deprivation will not necessarily be resolved by this alone. And that is why an HRBA does not require people to wait for better policies and legislation, but works at a number of other levels to ensure people’s claims are heard and responded to even before the policy is changed – such as the ‘people’ level, the administrative level, the political level, and the market level.

**Q: Is an HRBA one that an INGO or local established NGO can take – considering that it could have political ramifications, and be seen as threatening the status quo, which might make the country government object to the very functioning of the INGO/ NGO ? In other words, isn’t an HRBA an approach for activists, not service-delivery organisations?**

**A:** An HRBA involves networking between a number of different skills and abilities. There are those who need to be subject experts, those who need to know how to negotiate through the maze of law-making and interpreting legislation, those who know how to put people-pressure on the power-holders, those who can build bridges between opposing groups, those who know how to use the media effectively, those who need to do basic research, and so on.

Some of these roles can be taken by the staff of INGOs, some by the staff of NGOs, some by CBOs and so on. Networking and engagement between different stakeholders is crucial.

But it is the overall approach that must guide all these various efforts. One could, for example, negotiate with the state to be a benign benefactor – that could be effective, but would not be an HRBA. An HRBA is a **way** of responding to the tremendous inequalities in power relationships that exist in our world.

**Q: Are advocacy and an HRBA the same? Are they related to each other? Should we use an HRBA in all our advocacy work?**

**A:** An HRBA is an approach; advocacy is a means. Advocacy aims to influence the system. However, one can do advocacy in an NBA or an HRBA way. For example, if one does **advocacy** purely in a **lobbying** way, for example using a powerful agency’s contacts to influence a government system or official without getting empowered people involved in such advocacy efforts at different levels, then such an effort, while useful, could be considered as doing advocacy in a needs-based way,

which would end with ‘service delivery of rights’. However, if such lobbying is done as part of a larger effort of influencing that **also** uses people-centred advocacy efforts, then it could be considered as moving in the direction of an HRBA.

Whether one wants to use an HRBA or NBA when doing advocacy is a decision that must be taken within specific contexts.

**Q: Doesn't an HRBA demand greater costs and fewer immediate benefits than NBA, and only a hope of greater benefits in the distant future?**

**A:** The chances are that HRBA involves greater costs initially. In the long run, however, it is more sustainable and hence costs come down. An NBA does offer immediate benefits, and An HRBA does take more time. However, experience shows that HRBA results are not **only** in the distant future. There are incremental benefits and successes as the process unfolds. The ‘benefits’ – whether short-term or long-term – depend significantly on how an HRBA is carried out, for example the strategies used, the commitment and the expertise in various arenas. What seems to be the case is that if it is done effectively HRBA benefits are more sustainable and can be multiplied to many groups far more effectively than the benefits of an NBA.

**Q: What guidance do we have for countries where working on human rights is a significant challenge?**

**A:** Our primary and overarching focus will always be the people, and we may or may not partner with various actors in order to ensure the realisation of their rights. Therefore, the safety and welfare of communities, and that of WaterAid and partner staff, is a non-negotiable condition

Country representatives should understand the importance of carrying out an in-depth, continuous and objective political economy analysis of their country – including the power structure and underlying interests – while realising that the state is not a monolith. Country representatives must ensure they understand WaterAid's situation within the country – is it an international organisation or a local organisation? Does it get money from the government or not? How dependent is it on the government for its very existence? And so on. Countries must also ensure they have a support network around the organisation, including other alliances, power-holders and the people.

WaterAid's position may change over time since neither governments nor contexts are static. WaterAid should strive to reach a position where it feels comfortable to openly confront the state on serious ethical grounds. As Gandhi taught, we need to cooperate with the state whenever we can, and confront when we must but engage always.

Informed by this understanding, each country must choose the most constructive public position for itself in that context:

- **Partner** – This does not exclude the possibility of acting as a ‘critical friend’, challenging the state strategically when necessary; moreover, partnering should not be so close that there is no room to manoeuvre or change.
- **Neutral** – This position is **not** acceptable if the state’s actions or policies have a direct impact on WaterAid’s specific mandate.
- **Indirect challenger** – In most cases, WaterAid as an institution should not publicly oppose the state but work through other partners or methods to facilitate change.
- **Open challenger** – Only when absolutely necessary and if the severity of the situation is such that WaterAid is no longer prepared to work with the state from an ethical point of view. However, this course of action must be based on robust analysis and clear evidence, not opinions or political views.

**Q: What guidelines can we offer with regard to dealing with risk – to ourselves, to our partners and to the excluded communities we seek to empower?**

**A:** Risk analysis must be part of programme design. In this context, WaterAid or partners should consider carrying out a ‘Do no harm’ analysis looking at potential unintended effects of our actions. There is also no need to reinvent the wheel, as we can use or adapt guidance from within WaterAid (for example the Advocacy Handbook) or other organisations.

Different types of risk (for example media, assets or exposure) should be identified at different levels – such as community, partner and WaterAid. Risk matrices should be properly funded and actioned.

Risk analysis is not the end – we need to take concrete steps to mitigate risks. There are certain minimum things we should have in place at country level – for example risk register, review, focal persons with capacity and authority – not only looking at WaterAid but also at the communities and partners.

When a risk has the potential to become reality, country representatives should look at what measures are under their control and decide what to do. It would be important to put the right partnerships and alliances in place that may have the capacity and structures to carry out ‘risky actions’ or shield us from the risk. The senior management team in each country should link into INGO and other networks that are monitoring risks. Countries should commit to building risk management capacity, including crisis management.

**Q: How far can WaterAid go with an HRBA? What are the limits (for example court cases)?**

**A:** Countries should decide the best course on a case-by-case basis, linked to their country's risk analysis, monitoring information and the strategic value of the action to the country programme. We need to accept that, at times, stepping back or compromising may be the best option to make more progress later or elsewhere, but it is important to communicate this to staff so as not to demotivate them.

We need to be clear on our roles and responsibilities and communicate these clearly and honestly to all stakeholders. WaterAid should explore ways of assisting countries in cases of direct confrontation. We need to realise that we won't always be in control of the strategy that empowered people choose to use in claiming their rights. We should review insurance arrangements, not just for WaterAid but also communities and partners. We also need to consider that the protection of whistle-blowers goes beyond insurance, for example livelihoods and education.

WaterAid does not have the legal standing to bring cases to court ourselves, but we may support or accompany those who are affected. If the legal route is chosen, WaterAid needs to be clear on what it will or will not support, remembering that there may be other options by which to support people, including, for example, legal resource centres. Finally we must be ready to lose and recognise the related implications, for example payment of damages or setting precedents

**Q: Do we select our partners?**

**A:** The selection of partners comes after strategy development. The priority should be on partners who have experience of an HRBA; where this is not possible, we should select those that have potential or an interest in an HRBA. We should create or continue equal relations and create space for engagement while being mindful not to reinforce internal power dynamics in the partner organisation, being careful not to reduce rights-based organisations to contractors. Partners who represent the poorest and most marginalised should ideally be led by a person in the same situation, for example a person living with a disability leading an NGO representing people living with disabilities.

As far as existing partners are concerned, we should introduce an HRBA and human rights principles for existing partners, especially where we are shifting towards a district-wide approach. This will also involve the mapping and analysis of organisations or institutions for partnership to foster our work using the Partnership Framework, for example going beyond implementing partners to include other types of partners such as CSO or media networks and, academic institutions.

**Q: What guidelines can we give ourselves to effectively engage with networks or social movements while respecting the communities we work with using an HRBA?**

**A:** We should not be afraid to work with social movements, but should do so with care, since some of these movements have been compromised by issues around funding. We should be mindful not to ‘create’ our own movements.

The basis of our support should be solidarity and alignment on issues to strengthen our work. Engaging in these networks requires staff skills, time and organisational resources, along with a commitment to engage with their agenda.

We must engage with social movements on the following premises:

- We are accountable to the poorest and most marginalised people.
- We believe in, recognise and use an HRBA, which is based on human rights principles, in our work.
- We are non-partisan and only support issue-based movements tackling WASH poverty.
- Our analysis must be continuous to ensure the ongoing credibility of the issue and the movement in relation to the premise above.
- We will not lead these movements, but provide support (capacity building, information, solidarity) and encourage people-centred leadership.
- Our engagement should be through collaborative agreements, not legally binding Programme Partnership Agreements (PPAs).

**Q: How do we deal with respect for culture and respect for human rights, if or when they clash?**

**A:** We need to have a clear contextual understanding of the issues related to cultural practices and approach them from the people’s perspective. This will help us engage through a cultural practice window that supports the change we seek.

We might need to focus on the leadership and ‘gatekeepers’ as agents of change, and consider the role of opinion-leaders in dealing with culture clash. Where the leadership itself is the problem, we have to find productive ways of challenging it.

We have to be clear on our own internal context, which may be part of the cultural issue (staff bias).

**Q: What is WaterAid’s role with regards to other partner NGOs providing services? Do we act as duty-bearers or do we seek accountability from them in collaboration and engagement with communities where we work?**

**A:** We are not direct duty-bearers, but through our mission have the responsibility to realise rights to water and sanitation, and to be accountable to communities. We should seek to influence utilities and other service-providers (including NGOs) to be more accountable to their users.